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November 13, 2008

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Federal Communications Commission
Office of the Secretary

Via ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

ORIGINAL

Re: Notice of Ex Parte Presentation -WC Docket No. 08-219, *In the Matter of Network Enhanced Telecom, LLP* Petition for Declaratory Ruling

Dear Secretary Dortch:

This letter serves as notice that yesterday, November 12, 2008, Toni Van Burkleo and Michael Truemner of Network Enhanced Telecom, LLP ("NET"), participating by phone, and the undersigned (collectively, "parties") jointly met with William Dever and Stephanie Weiner, as well as Darryl Cooper, participating by phone, of the Wireline Competition Bureau.

The parties discussed NET's petition for declaratory ruling and the points included in the attached presentation. Please contact the undersigned with any questions.

Sincerely,

/s/ Michael Pryor

Michael H. Pryor
Counsel for NET

Enclosure

cc (via email): William Dever
Stephanie Weiner
Darryl Cooper

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Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

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Network Enhanced Telecom, LLP

Petition for Declaratory Ruling

Regarding the FCC's Payphone Compensation Rules

CC Docket 08-219

November 12, 2008



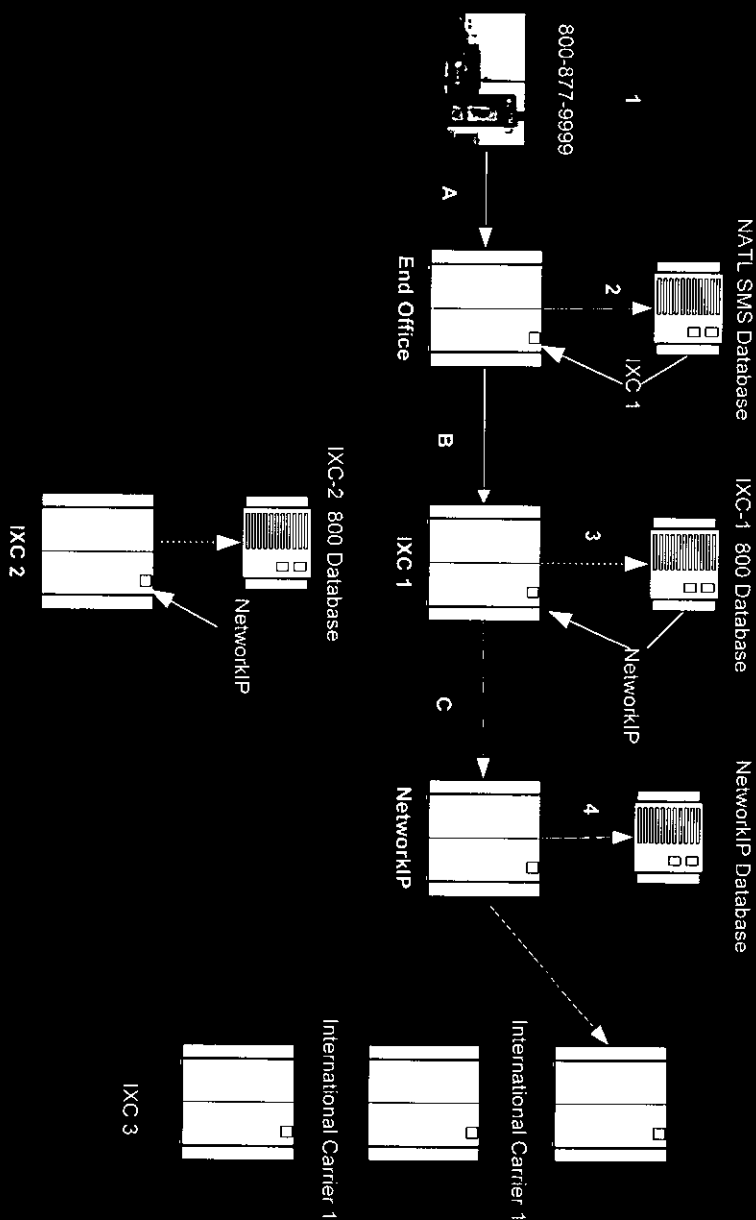
NET'S ROLE IN DELIVERING PAYPHONE CALLS

- Service provider for prepaid calling card providers and long distance resellers
- Provides "virtual" switching platform that enables prepaid calling card providers to control critical functions
- Innovative technology that provides call processing in real-time
 - Identifies payphone originated calls and deducts payphone surcharge from prepaid cards when call is placed
 - Provides its customers with immediate access to call information
- NET is a completing carrier for some calls and an intermediate carrier for others



TELEPHONE

Call Flow

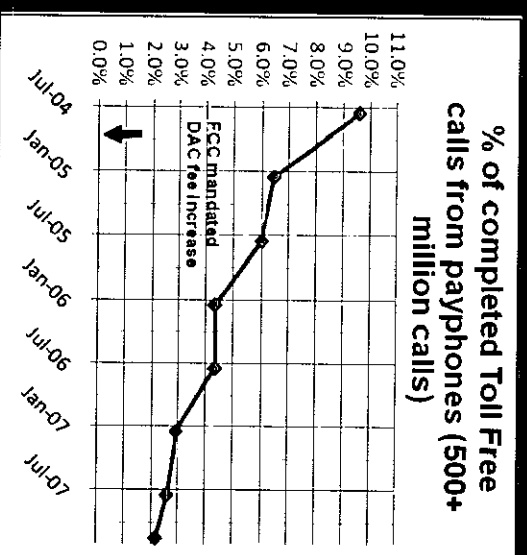


1. User dials an 800 number from the pay phone line.
2. End office queries the National SMS 800 database, National SMS 800 database returns data identifying which IXC to route the call to.
3. The IXC queries their local 800 database and routes the call to NetworkIP.
4. NetworkIP prompts the caller to enter a PIN and terminating number. If the call is valid the call is sent to a terminating carrier. When answer is received, billing is started immediately and pay phones cost are deducted from the user account.



COSTS OF REGULATORY COMPLIANCE AND LITIGATION VASTLY DISPROPORTIONATE TO PAYPHONE TRAFFIC

- Payphone calls are a small and continually dwindling percentage of traffic



- Today, NET processes 1.2 to 1.6 million calls per day, of which only 10,000 to 12,000, or less than 1%, are payphone originated calls



COSTS OF REGULATORY COMPLIANCE

- NET spends approximately \$200,000 per year to comply with the FCC's payphone orders
- NET has been issued "clean" audits for each of the past five years
- NET has made quarterly payments through its clearinghouse totaling in excess of \$13 million since November 2003 and over \$600,000 in clearinghouse fees for the same time period
- NET has spent substantial amounts in litigation fees and thousands of man-hours to defend against claims.



FCC HAS ESTABLISHED A COMPREHENSIVE REGULATORY STRUCTURE DESIGNED TO ENSURE COMPLIANCE AND PAYMENT

- Requires annual audit to confirm completing carrier accurately tracks payphone calls and makes payments. Auditor verifies that the carrier:
 - has procedures that “accurately track calls to completion”
 - has “effective data monitoring procedures”
 - has created a file for payphone calls that must be paid
 - has designated persons responsible for ensuring payments are made and adopted procedures to resolve disputes
 - has “adequate and effective” business rules to ensure that calls can be identified as coming from a payphone, and that calls are completed and thus compensable or incomplete and thus not compensable. 47 C.F.R. § 64.1320



FCC HAS ESTABLISHED COMPREHENSIVE REGULATORY STRUCTURE DESIGNED TO ENSURE COMPLIANCE AND PAYMENT, cont.

- Auditor must be able to “test all critical controls and procedures to verify that errors are insubstantial.”
- Auditor must render an opinion that company’s representation of compliance is complete and accurate or disclose any failure of compliance.
- Auditor’s report filed with the FCC and made available to payphone owners. 47 C.F.R. § 64.1320



HOW NET TRACKS AND PAYS FOR PAYPHONE CALLS

- NET records every 800 call that comes in with a payphone-specific coding digit and identifies, through answer supervision, whether the call has been completed.
- Call is completed when:
 - End user dials toll-free number belonging to a NET customer
 - End user enters PIN and dials destination number
 - Call connects to dialed party's number
- NET's systems automatically populate call detail records (CDRs) in real time with origination and completion information.



HOW NET TRACKS AND PAYS FOR PAYPHONE CALLS, cont.

- NET generates a quarterly report of completed, compensable calls that is sent to a third-party clearinghouse, Billing Concepts, Inc. (BCI).
 - List of toll free numbers dialed and completed, along with ANI of payphone.
 - Provides date, time, duration and CIC for each call
 - Contact file with company name, CIC contact name, address, phone number and email address of the originating carrier.
- BCI reconciles this call report with ANIs sent to it by payphone owners or aggregators for payment.
- BCI prepares a report identifying which PSPs are to be paid and sends a total bill to NET.
- NET wires funds to BCI, which disburses payments to specific PSPs and/or aggregators, like APCC.



REGULATORY COMPLIANCE SHOULD PROVIDE A SAFEHARBOR

- FCC's comprehensive regulatory structure is "more than sufficient to ensure that [payphone] calls do not go uncompensated." *Tollgate Order* ¶ 29
- Despite having invested in a state-of-the-art tracking system, obtaining "clean" audits each year, making all required filings and certifications, and providing payments consistent with its internal records and the bills sent by BCI - NET has been subjected to demands to further obtain and reconcile information and threats of litigation.
- Last year, NET spent hundreds of hours compiling and analyzing information, providing repeated explanations for variances with intermediate carrier reports in response to informal complaint that was subsequently withdrawn.



REMEDY:

- Demonstrated compliance should create immunity from suits.
Demonstrated compliance means:
 - Obtains and files “clean” independent audit report verifying accuracy of systems
 - Issues required reports and certifications
 - Makes payments consistent with internal records.
- Variance from intermediate carrier reports is insufficient grounds to overcome safe harbor.
 - Intermediate carriers report all payphone calls delivered, not just completed calls.
 - Failure to transmit proper payphone coding digits or ANI

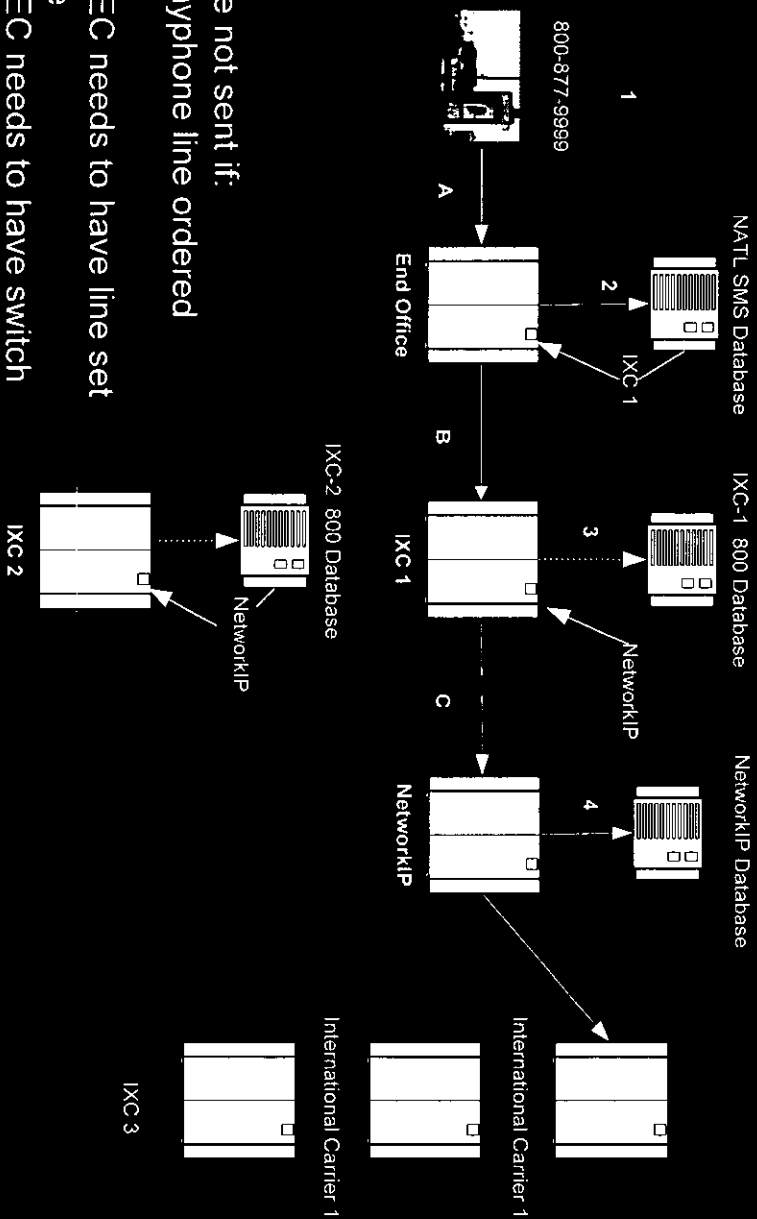


CONFIRM THAT PAYPHONE-SPECIFIC CODING DIGITS REQUIRED FOR COMPENSATION

- Consistent with FCC precedent that “the provision of payphone-specific coding digits is a prerequisite to payphone compensation.” *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, 13 FCC Rcd 4998, ¶ 13 (1998).
- Payphone specific coding digits are critical in a prepaid environment.
 - Enable deduction for surcharges on a real-time basis. Recovery is virtually impossible after the fact and causes economic hardship.
- Upstream carriers may fail to transmit digits.



800 Origination Diagram



Flex ANI digits are not sent if:
Point A - Local payphone line ordered incorrectly
Point A - Local LEC needs to have line set up as a payphone
Point B - Local LEC needs to have switch software loaded for Flex ANI
Point B - Local LEC received work order activating Flex ANI on IXC connection
Point B - IXC needed to order Flex ANI



Conclusion

- Respectfully request that FCC expeditiously adopt declaratory ruling to:
 - Establish immunity from complaints or lawsuits upon demonstrated compliance with FCC payphone compensation orders
 - Confirm that compensation requires payphone-specific coding digits and that liability for failure to do so, if any, lies with the upstream carrier that failed to include or to transmit payphone-specific coding digits.